No. 93-5770

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ROBERT EDWARD STANSBURY,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of California

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BRIEF *AMICUS CURIAE* OF THE CRIMINAL JUSTICE LEGAL FOUNDATION IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Can a suspect be in "custody" for the purpose of *Miranda* v. *Arizona* even though he has not been seized by the police prior to questioning?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

United States Constitution

Other Authorities

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INTEREST OF *AMICUS CURIAE*

The Criminal Justice Legal Foundation (CJLF)[1] is a nonprofit California corporation organized to participate in litigation relating to the criminal justice system as it affects the public interest. CJLF seeks to bring the constitutional protections of the accused into balance with the rights of victims and of society to rapid, efficient, and reliable determination of guilt and swift execution of punishment.

The present case involves a definition of custody for issuing *Miranda* warnings. Both petitioner's proposed rule and the standard used by the court below are unclear and unworkable, contrary to the rights of victims and society that CJLF was formed to advance.

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1. Both parties have consented to the filing of this brief.

SUMMARY OF FACTS AND CASE

Robyn Jackson, age ten, was kidnapped, raped, and murdered on the night of September 28, 1982. Brief of Petitioner 2-3. She was last seen talking to an ice cream truck driver at a school playground near her home in the Baldwin Park area of Los Angeles, California. *People* v. *Stansbury*, 4 Cal. 4th 1017, 1032, 846 P. 2d 756 (1993). Lieutenant Thomas Johnston of the Baldwin Park Police Department took charge of the investigation and discovered that two ice cream truck drivers were working in the area that day, petitioner Robert Edward Stansbury and another man. *Id.*, at 1050-1051. Suspicion initially focused on the other driver, as he fit the description given by an adult witness who had seen Robyn with an ice cream vendor on the day she disappeared, while petitioner did not. *Id.*, at 1051.

Lt. Johnston asked four plainclothes Baldwin Park police officers not involved in the investigation to go to petitioner's home in Pomona and ask him if he would come to the Pomona police station to answer some questions as a witness. Petitioner readily agreed to accompany the officers and accepted their offer of transportation. He was not handcuffed and rode in the front seat with one of the officers. *Ibid.*

Petitioner was questioned by Lt. Johnston for 20 to 30 minutes, providing narrative answers to the questions posed. *Id.*, at 1052-1053. When petitioner said that he had left his home around midnight in a borrowed turquoise car, Lt. Johnston became suspicious, as a witness had seen Robyn's body being thrown from a turquoise colored sedan into a drainage canal in the early morning hours. Petitioner was asked whether he had a criminal record, and he admitted to prior convictions for rape, kidnapping, and child molestation. Lt. Johnston left the room to confer with other homicide investigators and upon his return advised petitioner of his constitutional rights. Petitioner then stated that he did not wish to make any further statements. *Id.*, at 1052.

The trial court ruled in an evidentiary hearing that petitioner was not in custody prior to his formal arrest. It was only when petitioner made reference to a turquoise automobile that suspicion focused on him, and the court suppressed statements made after that point. *Id.*, at 1052. Petitioner was then convicted of first degree murder, lewd act on a child under the age of 14, rape, and kidnapping and sentenced to death. *Id.*, at 1031.

On automatic appeal, the California Supreme Court upheld the trial court's findings that petitioner had not been in custody before he mentioned the turquoise car and that statements prior to his arrest were properly admitted into evidence. *Id.*, at 1054. The court affirmed the judgment in its entirety. *Id.*, at 1031.

SUMMARY OF ARGUMENT

The *Miranda* rule is easily stated: in order to admit evidence obtained as a result of custodial interrogation by the police, a suspect must first have been warned of his constitutional rights. Though clear, the cost is high; *Miranda* excludes some statements that would otherwise be admissible, solely because of the lack of a warning. This Court has reasoned that such costs are justified given the gains in efficiency and certainty that result from replacing a case-by-case voluntariness inquiry with a bright line rule. As a consequence, any interpretation of the limits of *Miranda*'s application must provide a simple and easily administered rule. Any other approach only increases its costs without providing any of its benefits.

An individual is in custody for the purposes of *Miranda* only if he has been seized by a law enforcement official. This does not mean that a person is in custody *whenever* he has been seized, but rather that seizure is a necessary condition of custody. Some seizures do not rise to the level of custody, but all custodial encounters must begin with restraint of the person's freedom of movement.

The factual findings by the court below amply demonstrate that defendant was not in custody when he made incriminating statements in response to questions put to him by the investigating officer. At no time prior to his formal arrest was defendant seized by the police. Moreover, even if defendant may have been seized during the initial encounter at his trailer, that seizure terminated long before questioning began.

ARGUMENT

I. Any definition of custody must draw a bright line.

A. The Miranda Rule.

Under the *Miranda* rule, the only inquiry when seeking to admit a statement made during custodial interrogation is whether or not the suspect was informed of his constitutional rights. Speculation about the facts and circumstances involved in the interrogation is irrelevant, as is the suspect's knowledge of his rights without a warning being given. *Miranda* v. *Arizona*, 384 U. S. 436, 468 (1966). Attempting to infer knowledge of one's rights from a person's age, education, intelligence, or previous experience with police is "no more than speculation; a warning is a clearcut fact." *Id.*, at 469 (footnote omitted).

The *Miranda* rule thus creates a mandatory, conclusive presumption. A custodial confession obtained without "adequate protective devices" is deemed "compelled," *id.*, at 457-458 and n. 26, regardless of how conclusive the evidence may be that the confession was, in fact, voluntary. Mandatory, conclusive presumptions are inimical to the search for truth, so much so that this Court has absolutely prohibited their use to establish an element of the offense, holding that such presumptions violate the Due Process Clause. *Sandstrom* v. *Montana*, 442 U. S. 510, 523 (1979); see also *Rose* v. *Clark*, 478 U. S. 570, 580 (1986) (purpose of *Sandstrom* to avoid conviction of the innocent).

Yet the people, as well as the defendant, are entitled to due process of law. *Stein* v. *New York*, 346 U. S. 156, 197 (1953), overruled on other grounds in *Jackson* v. *Denno*, 378 U. S. 368, 391 (1964). If mandatory, conclusive presumptions are to be invoked against the people at all, they should, at the very least, be limited to those situations where the fact presumed is highly likely to follow from the fact found. The definition of "custody" for *Miranda* should not be extended to situations where the inference of compulsion is substantially weaker than it is in the case of a station house interrogation following formal arrest. To expand the presumption to such situations would "discredit constitutional doctrines for protection of the innocent by making of them mere technical loopholes for the escape of the guilty." *Stein*, 346 U. S., at 196-197.

The rule of *Miranda* excludes some evidence that might otherwise be admitted, were the inquiry to focus on the voluntary nature of the statement rather than the existence or nonexistence of a warning. These voluntary (but unwarned) statements could be admitted without violating the commands of the Fifth Amendment. *Oregon* v. *Elstad*, 470 U. S. 298, 306 (1985). Yet for the sake of clarity, efficiency, and certainty, *Miranda*'s rule will not allow the admission of even voluntary statements without the requisite warnings. Requiring warnings in every case excludes "trustworthy and highly probative evidence even though the confession might be voluntary under traditional Fifth Amendment analysis." *Fare* v. *Michael C.*, 442 U. S. 707, 718 (1979). *Miranda* impairs the pursuit of truth by concealing probative information from the trier of fact. *Michigan* v. *Harvey*, 494 U. S. 344, 350 (1990); *Withrow* v. *Williams*, 123 L. Ed. 2d 407, 427, 113 S. Ct. 1745, 1759 (1993) (O'Connor, J., concurring and dissenting).

These are the costs of the *Miranda* doctrine. Its "crucial advantage" is that it is clear and specific. *Berkemer* v. *McCarty*, 468 U. S. 420, 430 (1984). The rule informs prosecutors and police what they may do during custodial

interrogations and instructs the courts as to when statements made during such encounters are properly admitted into evidence. *Michael C.*, 442 U. S., at 718. This gain benefits both the accused and, in some circumstances, the state and "has been thought to outweigh the burdens that the decision in *Miranda* imposes . . . ." *Ibid.*

The "trigger" for *Miranda* warnings is custodial interrogation, defined as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, *supra*, 384 U. S., at 444. In the most basic scenario, a person is arrested pursuant to a warrant and taken to the station house for questioning by police. The requirement for a warning is obvious. The arrestee is physically detained by the state and has every reason to believe that the interrogation will continue for some time, usually in direct proportion to answers supplied in response to the officer's questions. This is clearly custodial interrogation as envisioned by *Miranda*, and the arrestee must be warned of his constitutional rights.

Where the facts differ from this archetype, as in the present case, *Miranda*'s application is unclear. The question as yet unanswered is at what point and under what circumstances warnings are required before the fruits of interrogation can be admitted. In other words, what does "custody" mean? This Court has determined that a typical traffic stop is not custody, *Berkemer* v. *McCarty*, 468 U. S. 420, 440 (1984), that questioning in a police station house is not determinative of custody, *Oregon* v. *Mathiason*, 429 U. S. 492, 495 (1977) *(per curiam)*, and that voluntary cooperation with police investigation does not trigger the warning requirement, *California* v. *Beheler*, 463 U. S. 1121, 1125 (1983) *(per curiam)*. However, these cases have not yet clarified *Miranda*'s language requiring a warning when "a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, *supra*, 384 U. S., at 444.

The cases subsequent to *Miranda* fail to provide a bright line for determination of when a suspect is in custody sufficient to require that he be warned of his constitutional rights. For persons who have been formally arrested, the analysis is simple and a warning is required. "[T]he ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Beheler*, *supra*, 463 U. S., at 1125 (quoting *Mathiason*, *supra*, 429 U. S., at 495). Before formal arrest, the line is indistinct and requires clarification by this Court.

B. The Value of a Bright Line.

Law enforcement officers interact with citizens in a multitude of disparate situations, ranging "from wholly friendly exchanges of pleasantries or mutually useful information to hostile confrontations of armed men involving arrests, or injuries, or loss of life." *Terry* v. *Ohio*, 392 U. S. 1, 13 (1968). Encounters are initiated by the police for a variety of reasons and often change character as the interaction continues, becoming more or less hostile with the progress of the conversation. *Ibid.* Police officers are presented with this diversity and complexity and must make hurried decisions, but a wrong decision may result in death or serious injury to themselves or others.

The consequences to the administration of criminal justice are similarly high. An officer may determine that a *Miranda* warning is not necessary, perhaps because the person being questioned is not considered a suspect, and the information obtained is not likely to be needed in a judicial proceeding against that person. If the officer is mistaken and at trial the court excludes some or all of the statements, then the officer's decision not to "mirandize" could result in an admittedly guilty criminal being released into society. "When that happens, it is not just the executive or the judiciary but all of society that suffers . . . the populace again finds a guilty and potentially dangerous person in its midst, solely because a police officer bungled." *Withrow* v.

Williams, 123 L. Ed. 2d 407, 425, 113 S. Ct. 1745, 1758 (1993) (O'Connor, J., concurring and dissenting). Because of its importance, this is a decision that demands accuracy by the officer. Given the wide variety of interactions, a bright line rule is the only way in which this determination can be made with confidence and reliability.

In making its own determination, the trial court also requires a clear and easily applied rule. If the standard is not a bright line, then the court may decide the evidentiary matter improperly, resulting in the release of defendants who would be convicted upon a proper application of the standard. Generally, no appeal by the state can be taken to test the correctness of the trial judge's adverse ruling. Thus it is important to get it right the first time. The surest way to bring accuracy to this judgment is to establish a bright line rule.

This Court has frequently taken the opportunity to comment on the necessity for clarity in fashioning rules pursuant to the *Miranda* decision. See, *e.g.*, *New York* v. *Quarles*, 467 U. S. 649, 658 (1984). Indeed, a litigant seeking to establish a case-by-case rule for determining custody bears a heavy burden. See *Berkemer* v. *McCarty*, 468 U. S. 420, 432 (1984) ("Absent a compelling justification we surely would be unwilling so seriously to impair the simplicity and clarity of the holding of *Miranda*."); see also *Moran* v. *Burbine*, 475 U. S. 412, 425-426 (1986) ("We are unwilling to modify *Miranda* in a manner that would so clearly undermine the decision's central 'virtue' " of giving firm guidance to police and the courts.). At bottom, the costs of the rule itself must be justified by its benefit in deterring unlawful police conduct: "Any rule that so demonstrably renders truth and society 'the loser' 'bear[s] a heavy burden of justification, and must be carefully limited to the circumstances in which it will pay its way by deterring official lawlessness.' " *Withrow* v. *Williams*, 123 L. Ed. 2d 407, 428, 113 S. Ct. 1745, 1760 (1993) (O'Connor, J., concurring and dissenting) (quoting *McNeil* v. *Wisconsin*,

115 L. Ed. 2d 158, 170, 111 S. Ct. 2204, 2210 (1991) and *United States* v. *Leon*, 468 U. S. 897, 908, n. 6 (1984)).

C. Defendant's Proposed Rule.

Defendant urges this Court to adopt the Eighth Circuit's nonexhaustive list of six factors for determining custody, found in *United States* v. *Griffin*, 922 F. 2d 1343, 1349 (1990):

> "(1) whether the suspect was informed at the time of questioning that the questioning was voluntary, that the suspect was free to leave or request the officers to do so, or that the suspect was not considered under arrest; (2) whether the suspect possessed unrestrained freedom of movement during questioning; (3) whether the suspect initiated contact with authorities or voluntarily acquiesced to official requests to respond to questions; (4) whether strong arm tactics or deceptive stratagems were employed during questioning; (5) whether the atmosphere of the questioning was police dominated; or, (6) whether the suspect was placed under arrest at the termination of the questioning." Brief for Petitioner 19, quoting *Griffin*.

A more muddled definition of custody would be difficult to imagine. Police officers cannot possibly be expected to predict how a court would rule on such a test. In addition, two of the elements of this test are completely irrelevant to the issue of compulsion on which *Miranda* is based.

In *Oregon* v. *Mathiason*, 429 U. S. 492 (1977) *(per curiam)*, an officer of the Oregon State Police asked Mathiason to meet with him to answer some questions about a recent burglary. *Id.*, at 493. Mathiason voluntarily appeared at the station house and confessed to involvement in the crime after the officer falsely stated that his fingerprints had been found at the scene. Mathiason was then informed of his constitutional rights and made a taped confession. *Id.*, at 493-494. The Oregon Supreme Court reversed his conviction, finding that the questioning took place in a "coercive environment" dominated by the police

and that such a setting was sufficient to require that *Miranda* warnings be given. *Id.*, at 494.

The United States Supreme Court reversed in a *per curiam* opinion, finding that "[a]ny interview of one suspected of a crime by a police officer will have coercive aspects to it . . . . *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.' " *Id.*, at 495. Furthermore, the officer's false statement regarding incriminating forensic evidence has "nothing to do with whether respondent was in custody for purposes of the *Miranda* rule." *Id.*, at 496. Yet defendant urges this Court to adopt a rule with "deceptive stratagems" as one of its factors, despite *Mathiason's* clear rejection of that factor as irrelevant.

Equally irrelevant is the sixth *Griffin* factor, arrest of the suspect at the end of the questioning. *Miranda* is concerned with compulsion. See part II.A., *post*, at 11-13. Unless the suspect is clairvoyant, events after he has made his statement cannot possibly have any relevance to whether it was compelled. Cf. *Berkemer* v. *McCarty*, 468 U. S. 420, 442 (1984) (unarticulated intent to arrest irrelevant).

Defendant thus asks the Court to adopt a test which lacks clarity and predictability and which turns on factors irrelevant to the concerns underlying the *Miranda* rule. Defendant's rule should be unequivocally rejected.

Miranda's singular virtue is its uniformity and clarity. Police know that they must give specific warnings before beginning custodial interrogation. Judges know that statements made during custodial interrogation cannot be admitted unless the police have given those warnings. Defining custody with a nonexhaustive, multifactored, case-by-case rule eliminates the virtue of *Miranda* and multiplies the costs of litigation. It is little different from the due process voluntariness test that *Miranda* sought to clarify. See *Withrow* v. *Williams*, 123 L. Ed. 2d 407, 420, 113 S. Ct. 1745, 1754 (1993). Indeed, the "most important[ ]" basis for the *Withrow* decision was the clarity of the *Miranda* rule,

and the *Withrow* Court asserted that *Miranda* is so clear that good faith disagreements between state and federal judges would not be "frequent." *Id.*, at 420-421, 113 S. Ct., at 1754-1755. Adoption of a fuzzy definition of "custody" would negate the basis of *Withrow* and require re-examination of that decision.

II. Seizure is a necessary but not sufficient requirement for custody.

A. Miranda, Compulsion, and Restraint.

Miranda must be read in light of the historical factors that motivated the decision, chiefly the experience of several decades of unsuccessful attempts to reform police interrogation techniques on a case-specific basis. State and local law enforcement officials proved unresponsive to repeated Court rulings that consistently overturned convictions because of aggressive investigative questioning. The Court noted, however, that by the time of the *Miranda* decision, contemporary police practice most commonly utilized psychological rather than physical coercion. *Miranda* v. *Arizona*, 384 U. S. 436, 448 (1966). Techniques such as false identification in a line up and days-long interrogation were offered as examples of common investigatory tactics. *Id.*, at 451-453. The Court also reviewed the facts of three recent decisions, concluding that "[i]n other settings, these individuals might have exercised their constitutional rights. In the incommunicado police-dominated atmosphere, they succumbed." *Id.*, at 456.

Miranda attempted to address this problem of undue coercion by requiring warnings before admitting the fruits of custodial interrogation. The decision is firmly rooted in the plain text of the Fifth Amendment: "nor shall any person . . . be compelled in any criminal case to be a witness against himself . . . ." U. S. Const. Amdt. 5. Forcing a person to do that which he would otherwise avoid is the forbidden practice and the sole concern of the *Miranda*

decision. See *Withrow* v. *Williams*, 123 L. Ed. 2d 407, 417-418, 113 S. Ct. 1745, 1752 (1993) (warning requirement enacted in order to counter "compelling pressures" inherent in custodial interrogation). *Miranda* is only implicated when there is compulsion and a police-dominated atmosphere. *Illinois* v. *Perkins*, 496 U. S. 292, 296 (1990).

But *Miranda* does not ban all police questioning or exclude all confessions. To the contrary, the decision explicitly notes that confessions are an important element of many convictions. *Miranda*, *supra*, 384 U. S., at 481. When the confession might be based on a desire to end the interrogation rather than on a genuine desire to admit culpability, then the veracity of the admission is suspect. *Id.*, at 447 ("dangers of false confessions"). The link between confession and the end of questioning is obvious; the decision seeks to preserve the value of honest confessions by requiring warnings that break the causal connection between termination of interrogation and admission of guilt.

The essential predicate of the warning requirement, therefore, is the belief that "significant custodial restraints produce, in the mind of the suspect, a form of prohibited compulsion." Williamson, The Virtues (and Limits) of Shared Values: The Fourth Amendment and *Miranda*'s Concept of Custody, 1993 U. Ill. L. Rev. 379, 404. It is the restraint of physical freedom and its concomitant psychological pressures that must form the basis of the definition of custody.

Subsequent cases testing the application of the decision support this idea. *Berkemer* v. *McCarty*, 468 U. S. 420 (1984) presented the issue of whether questioning during an ordinary traffic stop was custodial interrogation under *Miranda*. As Justice Marshall phrased the question in writing for a unanimous Court, "we must decide whether a traffic stop exerts upon a detained person pressures that sufficiently impair his free exercise of his privilege against self-incrimination to require that he be warned of his constitutional rights." *Id.*, at 437. The Court rejected the

idea that the officer's unarticulated plan to arrest the driver regardless of the answers given in response to questioning was determinative of custody, *id.*, at 442, again illustrating that the sole concern of *Miranda* is the psychological impact of physical restraint. See also *California* v. *Beheler*, 463 U. S. 1121, 1125 (1983) *(per curiam)* ("[T]he ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with formal arrest."); *Oregon* v. *Mathiason*, 429 U. S. 492, 495 (1977) *(per curiam)* ("[P]olice officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect.").

The emphasis for custody must be on the degree of physical restraint.[2] As the Court noted in *Berkemer*, "[f]idelity to the doctrine announced in *Miranda* requires that it be enforced strictly, but only in those types of situations in which the concerns that powered the decision are implicated." 468 U. S., at 437. As noted above, the sole concern of the decision was to avoid the coercion inherent when the state undertakes questioning after restricting a person's freedom of movement. If a person is free to choose whether to accompany police or not, then there is no need to warn him of his constitutional rights.

B. Seizure and Compulsion.

1. Seizure defined.

The latest and most thorough expression of the meaning of seizure under the Fourth Amendment is *California* v. *Hodari D.*, 113 L. Ed. 2d 690, 111 S. Ct. 1547 (1991).

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2. Physical restraint is not limited to application of physical force. A command to halt or remain, if obeyed, is restraint of physical freedom, even though the individual may not ever be touched by the officer. See part II.B.1., *post*.

There, two police officers chased a fleeing minor through an urban area. One officer split off from the chase to cut off Hodari and confronted him in an alley. Hodari ran down the alley towards the officer, looking over his shoulder to see if the officers were pursuing from behind. He did not see the other officer until he was nearly upon him, at which point he tossed away what appeared to be a small rock. A moment later, the officer tackled Hodari, handcuffed him, and radioed for assistance. The rock was found to be crack cocaine. *Id.*, at 695, 111 S. Ct., at 1549.

The issue presented was whether Hodari had been seized when he dropped the drugs. *Ibid.* The state admitted that the officer lacked reasonable suspicion to seize Hodari, but argued that the seizure was effected only when he was tackled, making the rock of cocaine admissible as abandoned property. *Id.*, at 695-696 and n. 1, 111 S. Ct., at 1549 and n. 1. Had the seizure been effected at the time Hodari spotted the officer in front of him, the cocaine would be inadmissible as fruit of an illegal seizure. *Ibid.*

The Court found for the state, ruling that a seizure requires either physical force or submission to the assertion of authority. *Id.*, at 697, 111 S. Ct., at 1550. Restraint of liberty by mere display or show of authority does not amount to seizure. Unless the individual yields in response to that assertion, there can be no seizure, but no physical touching is required. *Ibid. Hodari D.* does not elaborate on what sorts of actions qualify as an "assertion of authority," but assumed for the sake of argument that the officer's pursuit qualified as a show of authority calling upon the youth to halt. *Ibid.*

Two terms before *Hodari D.*, the Court decided *Brower* v. *Inyo County*, 489 U. S. 593 (1989) which held that a driver was seized when the stolen car he was driving at excessive speeds crashed into a police roadblock, killing him. The Court ruled that a seizure requires a willful act, even though an unintended person is the object of the detention. See *id.*, at 596. A seizure occurs "only when

there is a governmental termination of freedom of movement *through means intentionally applied.*" *Id.*, at 597 (emphasis in original).

The analogy offered by the Court is one where a parked and unoccupied police car slips its brake and pins a pedestrian against a wall. It may be a tort, but there is no constitutional violation, even if the state had a compelling interest in restraining the individual—for example if the passerby was a serial murderer in the process of running away from police officers. *Id.*, at 596. Because the police officers intended to cause Brower to stop, either on his own or by striking the roadblock, and he was so stopped "by the very instrumentality set in motion or put in place in order to achieve that result," he was seized. *Id.*, at 599.

Taken together, *Hodari D.* and *Brower* provide a clear definition of seizure. First, the police must intend to terminate an individual's freedom of movement through some means or instrumentality. Second, the individual must either be restrained by that method or comply with that assertion of authority. The person is seized only if both conditions are satisfied.

2. *Compulsion and physical freedom.*

Compel means "to necessitate or pressure by force." American Heritage Dictionary 385 (3d ed. 1992). The essence of compulsion is that an individual is convinced by the application of force to do that which he would ordinarily avoid. This pressure may be psychological, as in the case of prolonged detention with constant interrogation, or actual physical torture. *Miranda* itself recognized this typology and noted that psychological pressure is more common in modern police practice. *Miranda* v. *Arizona*, 384 U. S. 436, 448 (1966). Yet deception, even outright lying to the suspect, is not relevant to the custody analysis under *Miranda*. In *Oregon* v. *Mathiason*, 429 U. S. 492, 493 (1977) *(per curiam)* the state police officer falsely stated to the suspect that his fingerprints were found at the scene. The Court

held that this purposeful deception "has nothing to do with whether respondent was in custody for purposes of the *Miranda* rule." *Id.*, at 496.

What becomes clear from the reading of *Miranda* with *Mathiason* is that the degree of restraint on physical freedom is the principal factor in assessing custody. See also *Berkemer* v. *McCarty*, 468 U. S. 420, 440 (1984) ("The similarly noncoercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not 'in custody' for the purposes of *Miranda*.") *Miranda* defines custodial interrogation as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise *deprived of his freedom of action* in any significant way." 384 U. S., at 444 (emphasis added).

Amicus suggests that as the definition of "seizure" has been sharpened by the Court under its Fourth Amendment jurisprudence to encompass only purposeful, effective assertions of authority, so too should the understanding of custody under *Miranda* embrace only those instances when a suspect has been seized, as defined in the Fourth Amendment cases. Without some manner of actual restraint on physical freedom, purposefully directed towards the suspect by the police, there can be no compulsion that rises to the level of a Fifth Amendment violation and hence no need for prophylactic *Miranda* warnings.

C. Beyond Seizure.

At least one class of citizen-police encounters is a seizure, yet not custody under *Miranda*: a traffic stop. Using the definition of seizure that includes submission to an assertion of authority, *Berkemer* v. *McCarty* nevertheless holds that a traffic stop is not custody and *Miranda* warnings need not be given. 468 U. S. 420, 440 (1984). A prior decision had determined that stopping a vehicle and detaining its occupants constitutes a Fourth Amendment seizure, even

though the detention is brief. *Delaware* v. *Prouse*, 440 U. S. 648, 653 (1979).

The two critical factors in the Court's analysis in *Berkemer* were duration and intimidation. First, the Court noted that the duration of the traffic stop is generally brief. Typical expectations are that the driver will be obliged to wait for a short period while the officer checks his license and registration and that a citation might issue. 468 U. S., at 437. This is very different from a custodial interrogation, which is frequently prolonged and in which the individual "often is aware that questioning will continue until he provides his interrogators the answers they seek." *Id.*, at 438.

Second, the attendant circumstances surrounding a typical traffic stop are such that the individual does not feel "completely at the mercy of the police." *Ibid.* The motorist is confronted, usually in a public area, with one or at most two officers asking questions. *Ibid.* The atmosphere is "substantially less 'police dominated' than that surrounding the kinds of interrogation at issue in *Miranda* itself and in the subsequent cases in which we have applied *Miranda*." *Id.*, at 439 (citation omitted).

The traffic stop cases demonstrate that the custody analysis only begins with finding seizure by the police. Something more is needed. Distilled to its essence, custody requires seizure plus some objective manifestations that the seizure is likely to continue for more than a brief period.[3] No other definition, particularly that forwarded by defendant here, harmonizes the extant decisions in this area.

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3. *Berkemer* suggests that the location of the encounter may carry some weight when determining whether the suspect was in custody. *Berkemer*, 468 U. S., at 438-439. To decide the present case, this Court need not resolve whether location can substitute for duration as the "plus factor," because there was no seizure. However, location by itself was deemed insufficient for custody in two prior decisions. See *Oregon* v. *Mathiason*, 429 U. S. 492, 495 (1977) *(per curiam)*; *California* v. *Beheler*, 463 U. S. 1121, 1125 (1983) *(per curiam)*.

Seizure thus states a necessary but not sufficient condition for custody. Cf. *California* v. *Hodari D.*, 113 L. Ed. 2d 690, 698, 111 S. Ct. 1547, 1551 (1991) (holding that a reasonable person's belief that he is not free to leave is a necessary but not sufficient condition for seizure). An individual is in custody only if he has been seized, but not all seizures amount to custody, for example a traffic stop.

Stated in this way, it becomes apparent that the seizure of an individual can end, lifting the compulsion inherent in the police-citizen encounter and obviating the requirement for a *Miranda* warning. The end of the seizure is the end of a necessary precondition for requiring warnings. If the seizure is terminated before questioning begins, then the fruits of those questions are admissible without a warning. *Miranda* is not implicated in that factual setting.

Regardless of the definition of custody, a defendant can always argue that a statement was taken involuntarily and hence its admission violates the Fourteenth Amendment's Due Process Clause. See *Withrow* v. *Williams*, 123 L. Ed. 2d 407, 420, 113 S. Ct. 1745, 1754 (1993). The burden will be on the state to demonstrate otherwise and admit the evidence. *Lego* v. *Twomey*, 404 U. S. 477, 489 (1972). But if the suspect is not seized at the moment questioning begins, *Miranda* simply does not require the suspect to be warned of his constitutional rights, as it only applies to custodial interrogation.

III. Defendant was not seized and therefore not in custody during questioning by officers.

Several facts are relevant to the custody analysis. First, defendant came along with the police officers voluntarily. As the California Supreme Court specifically found, Officer Lee had been told to treat defendant as a witness and requested that he accompany them to the station house. *People* v. *Stansbury*, 4 Cal. 4th 1017, 1051, 846 P. 2d 756,

775 (1993). The court below also found that defendant was very cooperative and agreed to come to the station house for the express purpose of answering questions. *Id.*, at 1051, 846 P. 2d, at 776. He was given the choice to drive himself, but elected instead to accept the offer of a ride with Officer Lee. *Ibid.* Defendant was under no restraint during the trip and sat in the front seat of the police cruiser with Officer Lee. *Ibid.*

Defendant paints a far different portrait in his opening brief, one that is at odds with the facts as found by the court below. Defendant repeatedly states that he was confronted late at night by four officers, each of whom had his gun drawn and in a ready position. See Brief for Petitioner 20-22. This characterization directly conflicts with the factual finding that "[t]here is no evidence defendant saw the guns." *Stansbury*, *supra*, 4 Cal. 4th, at 1053, 846 P. 2d, at 777. Defendant admits that he did not challenge the officers' description of the circumstances under which he was picked up and interrogated. Brief for Petitioner 10. Thus it is irrelevant whether the officers had their guns drawn, cocked, and pointing at defendant's head (which they did not); the "only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Berkemer* v. *McCarty*, 468 U. S. 420, 442 (1984). Since the fact as found below is that defendant could not see any of the officers' weapons, the drawing of the weapons is irrelevant to the custody analysis.

Second, defendant's largely narrative responses during his interview with Lieutenant Johnston indicate that he was not seized at that time. As the California Supreme Court noted, "the form of questioning at defendant's interview was not accusatory; the investigating officer simply asked defendant, a potential witness, to describe his movements and observations." *Stansbury*, *supra*, 4 Cal. 4th, at 1053, 846 P. 2d, at 777. The court also indicated that this was not a case where the officer confronted the suspect with evidence

against him or asked for his cooperation in lieu of immediate arrest. *Ibid.*

This factual finding contrasts sharply with the facts in *Oregon* v. *Mathiason*, 429 U. S. 492 (1977) *(per curiam)*. There, the suspect voluntarily appeared at the station house and was escorted into an office. The door was closed behind him. The officer then accused the suspect of involvement in the crime and falsely stated that his fingerprints had been found at the scene. *Id.*, at 493. The Court concluded that there was no need for *Miranda* warnings because it was "clear from these facts that Mathiason was not in custody," and held that the officer's deceptive stratagem "has nothing to do with whether respondent was in custody for purposes of the *Miranda* rule." *Id.* at 495-496.

Defendant, like Mathiason, voluntarily went along with the police to the station house and made no effort to leave. Defendant was not accused of involvement, nor did the interviewing officer fabricate evidence to coerce cooperation. *People* v. *Stansbury*, 4 Cal. 4th, at 1053, 846 P. 2d, at 777; Brief for Petitioner 6-7 n. 3, 8-9. Even if Lt. Johnston had lied to defendant, that would not be a factor for determining custody. *Mathiason*, *supra*, 429 U. S., at 496; see also *Illinois* v. *Perkins*, 496 U. S. 292, 297 (1990) ("*Miranda* forbids coercion, not mere strategic deception by taking advantage of a suspect's misplaced trust . . . ."); *Moran* v. *Burbine*, 475 U. S. 412, 423-424 (1986) (deliberate withholding of information, while objectionable as an ethical matter, does not necessarily violate *Miranda*).

Defendant's final contentions are that he was questioned in a secure area of the jail, that he was never informed that he was free to terminate the interview, and the fact that he was arrested at the conclusion of the interview further demonstrates that he was in custody. Brief for Petitioner 23-27.

Location is not a factor for determining seizure. This Court specifically rejected location in *Mathiason*, *supra*, 429 U. S., at 495: "Nor is the requirement of warnings to be

imposed simply because the questioning takes place in the station house . . . ." The Court rejected the Oregon Supreme Court's use of a "coercive environment" test, holding that any interview with the police will have some coercive aspects to it, simply by virtue of the authority of the law enforcement system. *Ibid.* Other cases have also found an absence of custody even though the suspect was questioned at the police station house. See, *e.g.*, *California* v. *Beheler*, 463 U. S. 1121, 1125 (1983) *(per curiam)*.

Failure to warn the suspect that he is free to terminate the interview is also unimportant for seizure analysis. The question confronting the investigating officers is whether to issue *Miranda* warnings or not. Whatever bright line virtues exhibited by the *Miranda* doctrine remain, see *Withrow* v. *Williams*, 123 L. Ed. 2d 407, 432, 113 S. Ct. 1745, 1764 (1993) (O'Connor, J., concurring and dissenting), a rule that makes the issuing of warnings dependent on whether a "mini-*Miranda*" warning was given would be illogical and unworkable in the extreme.

Finally, the post-interview consequences have no relevance to the determination of custody. Defendant claims that "the subsequent arrest colors what went before" and argues that the arrest should serve as an indicium of custody. Brief for Petitioner 27. This is a surprising position, particularly in light of petitioner's claim some three pages before that "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Id.*, at 24 (citing *Berkemer*, 468 U. S., at 422). Defendant's latter contention is quite correct and is a verbatim exposition of language from the *Berkemer* decision. To conclude, however, that a reasonable person's mental state at the time of questioning is dependent on an event that occurs some time after questioning has finished is absurd.

Defendant was not seized while offering narrative answers to Lt. Johnston's questions. He was neither physically forced nor verbally commanded to go to or remain in the police station. Therefore, defendant was not subject

to custodial interrogation and the failure to warn him of his constitutional rights does not render those statements inadmissible.

CONCLUSION

The judgment of the California Supreme Court should be affirmed.

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Respectfully submitted,

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